**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 250 OF 2004

Hoshiar Singh ... Petitioner

V/s.

Union of India & Ors. ... Respondent

Mr. Shyam Mehta with Mr. Satendra Kumar for the petitioner.
Mr. Y.R. Mishra with Ms. Ritu Singh for the respondents.

**CORAM : F.I. REBELLO, J.**
**ANOOP V. MOHTA, J.**
**DATED : 21st March, 2006**

P.C.

. The petitioner is presently holding the post of Chief Petty Officer. He was considered for promotion for the post of Master Chief Petty Officer (MCPO II).

2. A Chief Petty Officer can be considered for the post of MCPO II only on three occasions. In the instant case, the petitioner was considered by the competent Board which met in the year 2000-2001.

3. The main challenge by the petitioner by the present petition is that the Board which met in the year 2000-2001 did not take into consideration the fact that the adverse remarks for the year April 1998

to March 1999 were to be expunged and that while drawing interse merit list for selection to the rank of MCPO II, the weightage of ACRs in 1998-99 had to be done by calculating the average of other ACRs as set out in the communication. The learned counsel also points out that, had the adverse remarks not been considered, in terms of communication dated 11th September, 2001, it would have an immediate effect apart from ACR ratings also on the annual assessment and pen picture. On behalf of the respondents the learned counsel points out that for the year 2000-2001 even if adverse entry is excluded, the petitioner cannot succeed as in the order of merit he will be much below the last candidate which was selected. This is based on the assessment prepared.

4. The real question which we have to ask is whether failure by the Board to consider the communication dated 11th September, 2001 has resulted in the case of the petitioner not being properly assessed. When the Board met in the year 2000, letter of 11th September, 2001 was not available. In the year 2001, when the Board met between the period 4th September, 2001 and 14th September, 2001, it is not possible to know whether the communication of 11th

September, 2001 was considered and petitioner's ACRs drawn up accordingly. In the light of that we hold that a review D.P.C. will have to be constituted to consider the petitioner's case for consideration for the year 2000 and 2001. The Board will independently assess the petitioner's case bearing in mind the letter dated 11th September, 2001 and overall change, if any, in the petitioner's annual assessment, ACR and pen picture.

5. Considering the above, the petition partly succeeds inasmuch as respondents are directed to place the petitioner's case before the Board for review for the year 2000 and 2001 within three months. Respondents are directed to ask the review board to consider petitioner's case in the light of what has been set out and thereafter pass appropriate orders. After review by the board if the petitioner comes within the zone of selection, then to that extent, respondents to pass appropriate order for his selection. The date of promotion would be from the back date but monetary benefits would be paid from the date when petitioner is promoted. If the petitioner does not come in the merit list, his case will have to be rejected.

6. Rule made absolute.

7. Petition accordingly disposed of.

**[F.I. REBELLO, J.]**

**[ANOOP V. MOHTA, J.]**